Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

DAVID WAYFIELD,

PETITIONER

vs.

TOWN OF TISBURY,
MARJORIE CONVERY

RESPONDENTS

PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Appellate Court, First Circuit, erred in not reversing the dismissal by the U.S. District Court of the petitioner's suit in which he claimed that after the initial approval, the Tisbury Senior Center, a community forum for people of all ages and political persuasions, denied Wayfield, a World War II veteran, his constitutional right of free speech regarding a discussion group concerned with World War II history, when it learned of Wayfield's historical revisionist perspective?

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2. Whether the Appellate Court, First Circuit, when reversing the dismissal of the U.S. District Court of the petitioner's suit regarding his banning from the library, failed to note that the

Vineyard Haven Public Library also denied Wayfield's and the people of Tisbury's constitutional right of freedom to read, by violating its own by-laws and the "Library Bill of Rights" and by imposing ad hoc and discriminatory censorship so as to suppress the knowledge of significant scholarship of historical revisionism concerning the World War II?

PARTIES TO THE PROCEEDING

The caption of the case in this Court contains the names of all parties to the proceedings in the First Circuit.

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IN THE SUPREME COURT

OF THE

UNITED STATES OF AMERICA

OCTOBER TERM, 1993

DAVID WAYFIELD, PETITIONER

vs.

TOWN OF TISBURY,

MARJORIE CONVERY, RESPONDENTS

PETITION FOR WRIT OF CERTIORARI TO THE

UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

Petitioner, David Wayfield, respectfully prays that the Writ of Certiorari be issued to review the

decision of the U.S. Court of Appeals for the First Circuit which remanded for trial petitioner's claim "in regard to the allegedly politically motivated banning of Wayfield from the Vineyard Haven Library" (A-1) but refused to acknowledge that the Town of Tisbury, under the color of law, abrogated the First Amendment and suppressed the freedom of speech for Wayfield and those who respect anti-Zionist Jews, those who support Holocaust revisionist scholarship and the 22% of adult Americans for whom "[it] seems possible [that the Holocaust] didn't happen" (source: Roper Organization survey of 922 adults Nov. 14-21, 1992, sponsored by the American Jewish Committee).

OPINIONS BELOW

The opinion of the Court of Appeals

is reported as David Wayfield vs. Town of Tisbury and appears in Appendix A-1 of this Petition. The Court of Appeals denial of the Petition for Rehearing appears in Appendix A-15. The unpublished written opinion of the U.S. District Court of the First Circuit of Massachusetts appears in Appendix A-16 to this Petition.

JURISDICTION

The Court of Appeals' Opinion in this matter was filed on November 29, 1993. A timely Petition for Rehearing was filed on December 13, 1993. The Court of Appeals' denial of the Petition for Rehearing was issued January 4, 1994. This Court's jurisdiction is invoked under Title 42 U.S.S. Sections 1983, 1985 and 1988 and the First and Fourteenth Amendments to the Constitution.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendments 1 and 14 to the U.S. Constitution are set forth in Appendix A-43. Sections 1983, 1985 and 1988 of Title 42 are set forth in Appendix A-45.

STATEMENT OF THE CASE

FIRST CAUSE OF ACTION:

The issue involves abridgment of the right of free speech under color of state law to World War II (WW II) veteran wishing to express in a public forum his Holocaust revisionist views.

BACKGROUND:

There is a dearth of evidence of mass graves of about 2,000,000 Jews shot but not cremated during WW II, inadequate forensic (toxicological) evidence of gassing of additional 4,000,000 Jews, and astounding lack of the intensely-sought-for-singular wartime Nazi document explicitly ordering the Final Solution. Faced with these facts establishment's Holocaust exterminationist scholars scorn physical evidence and rely mostly on eyewitness testimonies as the final proof

of mass extermination during WW II. In recent years even some concerned exterminationists such as Princeton Professor Arno Mayer disappointingly acknowledged that the "sources for the study of the gas chambers are at once rare and unreliable," while the foremost anti-Revisionist scholar Pierre Vidal-Naquet warned: "Most of what is known [about gas chambers] is based on the depositions of Nazi officials and executioners at postwar trials and on the memory of survivors and bystanders. This testimony must be screened carefully . . . ."

On March 29, 1993, the District Court in Boston explained that: "Holocaust Revisionists contend that traditional accounts of Jewish suffering at the hands of Adolph Hitler and claims of state sponsored racial genocide are greatly

exaggerated." (A- 22) Two weeks later, on April 18, 1993, the American Jewish Committee announced that about 22% of adult Americans have doubts about the extent of the Holocaust and apparently consider the quest of the Holocaust revisionist scholars for the physical evidence of the homicidal mass gassings and mass executions by firearms as credible. In distinction from the exterminationists, Holocaust revisionists put more credence into evidence from the field of forensic science, archeology, and analysis of wartime aerial photography, which seem to contradict the exterminationist story. Moreover, through document analysis they question authenticity of the few documents suggestive of German policy of homicidal mass gassings and scorn the accuracy of

eyewitness testimony. The inaccuracy of such testimonies has been recently acknowledged on 2/5/94 in The New York Times with a title "[Holocaust Survivor] Syndrome Known Since '52," while the appropriateness of debate was advocated by the three-column-wide editorial title "Don't Cut Off All Debate On The Holocaust" espoused by The New York Times in the January 1, 1994, issue (A-70). The recent scholastic debate between Holocaust revisionist and exterminationist appears similar to the controversy between creationists and evolutionists which culminiated in the famous, so-called "Monkey trial" of John Scopes in Tennessee in 1925.

FACTS OF THE CASE:

The Tisbury Senior Center (TSC) is a major, indoor community forum used by

politicians like Congressman Gerry Studds, celebrities like Mike Wallace, and even school children. It is controlled and owned by the Town of Tisbury while the supervision Council of Aging of Town of Tisbury (CATT) is appointed by Tisbury's three Selectmen which all in turn are regulated by the State of Massachusetts.

In December 1991, the director of TSC had solicited from Wayfield, a WW II veteran, the formation of a discussion group that would review the history of WW II. When in 1992 it became apparent to TSC and CATT that Wayfield would not limit his discussion to the current, "politically correct" exterminationist version of WW II history, but that he wished to talk about the WW II and the Holocaust from the historical revisionism point of view (A-51), in February 1992,

the Chairman of the Town of Tisbury Council on Aging wrote that "the Board" discussed Wayfield's proposal in depth and decided that "Historical Revisionism" should be discussed elsewhere (A-53).

SECOND CAUSE OF ACTION:

The issue involves discriminatory censorship and arbitrary exclusion from a public library of WW II and Holocaust revisionist printed and audio-video materials and/or lecturers, occurring on the background of an intense promotion of Holocaust exterminationist materials and speakers.

BACKGROUND: (see the first cause of action)

FACTS OF THE CASE:

The Vineyard Haven Public Library (VHPL) is ruled by its by-laws adopted in August of 1988 (A-60) which compel it to follow the "Library Bill of Rights" amended by the American Library Association in 1980 (A-55), and the "Freedom to Read" Statement of the American Library Association's Office for

Intellectual Freedom (A-62). The VHPL is owned by the Town of Tisbury and both are regulated by the State of Massachusetts.

The Library Bill of Rights demands that the VHPL and all "[l]ibraries should provide material and information presenting all points of view on current and historical issues and materials should not be proscribed or removed because of partisan or doctrinal approval." (A-55) Moreover, the VHPL and all "[l]ibraries should cooperate with all persons and groups concerned with resisting abridgment of free expression and free access to ideas." (A-56)

In its effusive condemnation of "suppression," "censorship" and "purges" of books and materials at the libraries, the "Freedom to Read" Statement goes as far as to reproach subreptitious

discrimination and censorship which result in "the shadow of fear cast by these pressures [which] leads, we suspect, to even larger voluntary curtailment of expression by those who seek to avoid controversy." (A-64)

The VHPL contains an estimated 12 feet of shelf space of books, some in duplicate, devoted exclusively to discussion of the Holocaust from the point of view of exterminationism. VHPL did not stock in the past or now a single book or audio-visual material expressing views of Holocaust revisionists.

Moreover, over the years the VHPL invited numerous speakers with exterminationist views such as Kathrine Graham, Art Buchwald and Mike Wallace, all of whom oppose the scholarship of historical and especially Holocaust revisionism.

In December of 1990 the petitioner approached the director of the VHPL with a suggestion to restore the balance to the library's collection in regard to the WW II history and the Holocaust and purchase or at least accept as a gift scholarly revisionist materials.

In January 1991, this petitioner's request was rejected, and immediately he was slandered for "stealing" and accused of "assault," the latter a rather difficult deed for an unarmed, elderly, post-myocardial-infarction individual. In this regard the Court of Appeals First Circuit opined, and the respondent VHPL did not object, that "it is possible to infer that the accusation of stealing was a pretext and that the real reason for the 'assault' and the Director's letter banning Wayfield [from the library], was

animus toward Wayfield's political views." (A-12)

In February 1991, the Tisbury Board of Trustees proposed and approved a set of "Library Rules" in which items 5 and 6 were prompted by the incident with the petitioner. (A-58)

In addition, there is an entire sleuth of instances of discriminatory actions perpetrated by the VHPL and Town of Tisbury municipal agents. The discriminatory notoriety of the Town of Tisbury is best expressed in its Brief to the District Court in Boston which blatantly states that:

> "Wayfield identifies himself as a Christian European-American which is not a Constitutionally protected class!"

of which even the unsympathetic District Court in Boston decreed that,

> "Town's statement in its brief to

> this effect is gross misstatement of the law and is patently false. Except under very limited circumstances, the government must act in a race-blind, religion neutral manner with regard all citizens." (A-37-38)

REASONS FOR GRANTING THE WRIT

In Reference to the First Cause of Action:

Since the actions of Tisbury officers were carried out under the color of state law, the petitioner believes that these decisions were illegal because according to the First Amendment state and/or municipal agents may not deprive a citizen of the U.S. or other persons within their jurisdiction of any rights or privileges secured by the Constitution and laws (A-43-45).

Wayfield had a constitutional right to express at TSC his convictions and those of about 22% of adult Americans who doubt the extent of the Holocaust because

the TSC is a public forum. Indeed, aside exterminationist opinions, various controversial views were invited and allowed to be aired many times at the same forum. Speakers of various creeds, races (such as a black renaissance author Dorothy West or activists of the local Wampanoag Tribal Council) and sexual orientation (such as Congressman Gerry Studds) lectured at the TSC. The written rebuke of Wayfield by the Chairman of CATT (A-53) explicitly proves that discrimination against the petitioner was conducted because of petitioner's principles effectively abridging his freedom of speech. Thus, under the color of state law, TSC and CATT unlawfully established and enforced ad hoc and discriminatory ruling which denied Wayfield this public forum.

Because even prior to discovery, the abridgment of the petitioner's freedom of speech and the Tisbury citizens' freedom to know is supported by non-conclusory evidence, the petitioner respectfully pleads that the Certoriari Writ be issued, so the U.S. Supreme Court might allow Wayfield due process of law by means of a jury trial.

In Reference to the Second Cause of Action:

The facts of the case indicate that the VHPL is a public institution whose officers are regulated by the state and that they flagrantly abridged its own by-laws, the "Library Bill of Rights," the "Freedom to Read" statement and the rights and privileges bestowed on the petitioner by the First Amendment. Because even

prior to discovery, the abridgment of the petitioner's freedom of speech and the citizens of Tisbury freedom to read is supported by factual evidence, the petitioner respectfully pleads that the Certoriari Writ be issued, so the U.S. Supreme Court might allow Wayfield due process of law by means of a jury trial.

CONCLUSION:

For the reasons stated, the Writ of Certioari should issue to review the judgment of the United States Court of Appeals for the First Circuit.

Respectfully submitted,

David Wayfield

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UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

No. 93-1535

DAVID WAYFIELD

Plaintiff, Appellant,

v.

TOWN OF TISBURY

Defendant, Appellee.

JUDGMENT

Entered: November 29, 1993

This cause came on to be submitted on the briefs and the original record on appeal from the United States District Court for the District of Massachusetts.

Upon consideration whereof, It is now here ordered, adjudged and decreed as follows: The district court's dismissal of all Wayfield's claims except those against Ms. Convery and the Board of Trustees in regard to the allegedly

politically motivated banning of Wayfield from the Vineyard Haven Library is affirmed. As to those claims the dismissal of the complaint is vacated, the denial of the motion to amend the complaint is reversed and the cause is remanded to the district court for further proceedings in accordance with the opinion issued this date.

No costs.

By the Court:

Francis P. Scigliano

Clerk.

[cc: Mr. Wayfield and Ms. Longman]

UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

No. 93-1535

DAVID WAYFIELD

Plaintiff, Appellant,

v.

TOWN OF TISBURY,

Defendant, Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

[Hon. Walter Jay Skinner, U.S. District Judge]

Before

Cyr, Circuit Judge,

Bownes, Senior Circuit Judge,

and Boudin, Circuit Judge.

David Wayfield on brief pro se.

Tracie L. Longman and Roche, Carens & DeGiacomo on brief for appellee.

November 29, 1993

Per Curiam. Appellant David Wayfield alleges that the Town of Tisbury, in conjunction with numerous private parties, deprived him of his constitutional rights in violation of 42 U.S.C. § 1983. After the defendants filed a motion to dismiss the entire complaint, Wayfield moved to amend his original complaint. This motion was denied by the district court on the ground that the amended complaint would also be subject to dismissal. Wayfield appeals the dismissal of his civil rights action. With one exception, we affirm the dismissal of Wayfield's claims.

In dismissing Wayfield's civil rights claims, the district court seems to rely in part on the doctrine that civil rights complaints must be pled with heightened particularity. See Dartmouth Review v. Dartmouth College, 889 F.2d 13, 16 (1st

Cir. 1989). However, the Supreme Court has recently cautioned that civil rights claims are to be subject only to normal standards of pleading. Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit, 113 S.Ct. 1160, 1163 (1993). The proper standard for assessing the adequacy of the instant complaint then is whether, accepting the factual allegations in the complaint as true, and construing these facts in the light most favorable to the plaintiff, the pleading shows any facts which could entitle plaintiff to relief. See, e.g., Gooley v. Mobil Oil Corp., 851 F.2d 513, 514 (1st Cir. 1988). Moreover, as a pro se plaintiff, Wayfield is entitled to have his complaint "liberally construed." Estelle v. Gamble, 429 U.S. 97, 106 (1976).

Even under this more generous standard, most of Wayfield's causes of action are subject to dismissal for the reasons stated in the district court opinion, dated March 29, 1993. However, we find that the amended complaint, liberally construed, does state a cause of action under section 1983. We therefore reverse the district court's denial of Wayfield's motion to amend his complaint and vacate the dismissal order in part.

According to his amended complaint, on December 14, 1990, Wayfield went to the Vineyard Haven Public Library where he spoke with the Library Director, defendant Marjorie Convery, and attempted to persuade her to stock several "revisionist" books and periodicals. Ms. Convery did not respond and "seemed very angry but controlled." Within an hour,

Wayfield was falsely accused by Ms. Convery of stealing a menorah from the library. When he refused her request to open his shoulder bag to be searched, Wayfield was "assaulted" by Convery. On December 18, Wayfield received a certified letter from Convery informing him that "[a]s a result of the disruptive incident that occurred on Saturday . . . your presence on the property or in the building will no longer be permitted." On December 20, he received another letter dated December 19, 1990, from the Board of Trustees for the Vineyard Haven Public Library, announcing that, due to the "disruptive incident," he was banned from the library until April 2, 1991. After Wayfield returned to the library in January 1991, he was charged with trespassing. The charges were eventually

dropped. Wayfield admits to the existence of a disturbance but alleges that he was the victim of an illegal assault by Convery. He further alleges that the ban imposed upon him was due not to any disturbance but was in retaliation for his political views.

To state a cause of action under 42 U.S.C. § 1983, a plaintiff must allege sufficient facts to support a determination "(i) that the conduct complained of has been committed under color of state law, and (ii) that [the alleged] conduct worked a denial of rights secured by the Constitution or laws of the United States." Chongris v. Board of Appeals, 811 F.2d 36, 40 (1st Cir.), cert. denied, 483 U.S. 1021 (1987). Liberally construing the complaint and accepting its allegations as true, we find that the

complaint states a cause of action under 42 U.S.C. § 1983 against Ms. Convery. First, as evidenced by her letter of December 18, 1990, banning Wayfield from the library, Ms. Convery purported to act under the color of state law. Second, the banning of Wayfield because of his political views would appear to be a violation of his constitutional rights. Cf. Nestor Colon Medina & Sucesores, Inc. v. Custodio, 964 F.2d 32, 40 (1st Cir. 1992) (denial of land use permit in unjustifiable retaliation for expression of political views constitutes a first amendment violation).

> [While a] State or its instrumentality may, of course, regulate the use of its libraries or other public facilities . . . it must do so in a reasonable and

> nondiscriminatory manner, equally applicable to all and administered with equality to all . . . . And it may not invoke regulations as to use --whether they are ad hoc or general --as a pretext for pursuing those engaged in lawful, constitutionally protected exercise of their fundamental rights.

Brown v. Louisiana, 383 U.S. 131, 142-43 (1966).

To be sure, the allegations that the assault by Ms. Convery and her banning him from the library were motivated by animus toward Wayfield's political views are conclusory. Such conclusory allegations become facts for pleading purposes "only when such conclusions are logically compelled, or at least supported, by the stated facts, that is, when the suggested

inference rises to what experience indicates is an acceptable level of probability." Dartmouth Review v. Dartmouth College, 889 F.2d 13, 16 (1st Cir. 1989).

The complaint does allege facts which, albeit circumstantial, support the conclusion that the banning by the Director was politically motivated. Since the state of mind of an actor often "must be inferred from the things [a party] says or does[,]" Anthony v. Sundlun, 952 F.2d 603, 605 (1st Cir. 1991), circumstantial evidence alone can support a conclusion or discriminatory intent. Id.

First, Wayfield alleges that on the day of the incident which led to the banning he discussed with the Director his political views. Not only was she thus aware of those views but Wayfield alleges

that she "seemed very angry but controlled." He then alleges that "within an hour" he was accused falsely of stealing a menorah and was "assaulted" by the Director. From these facts, it is possible to infer that the accusation of stealing was a pretext and that the real reason for the "assault" and the Director's letter banning Wayfield was animus towards Wayfield's political views.

We also find that, although the question is very close, the complaint alleges a cause of action against the Town of Tisbury as well. According to the complaint, liberally construed, the Board of Trustees of the Vineyard Haven Library banned Wayfield from the library between December 19, 1990, and April 2, 1991 because of his political views. While the Board purported to act only because of the

"disruptive incident" which occurred between Wayfield and Convery, the complaint alleges that this incident was only a pretext, a conclusion we have decided is supported by the facts alleged in the complaint. We do not find the possible inference that the Board, acting on the basis of information provided by the Director, may have been aware of, and even shared, the Director's intent, to be so speculative as to require dismissal of this case without any further inquiry. Since the Board of Trustees is the body responsible for managing the library, see Mass. Gen. L. ch. 78, § 11, any illegal acts it may have committed would expose the town to liability. See Pembaur v. Cincinnati, 475 U.S. 469, 483-84 (1986) (municipality is liable under section 1983 even for "a single decision to take

unlawful action . . . [which is made] by the official or officials responsible for establishing final policy with respect to the subject matter in question.").

We affirm the district court's dismissal of all Wayfield's claims except those against Ms. Convery and the Board of Trustees in regard to the allegedly politically motivated banning of Wayfield from the Vineyard Haven Library. As to those claims, we vacate the dismissal of the complaint, reverse the denial of the motion to amend the complaint, and remand to the district court for further proceedings.

Affirmed in part; vacated in part and remanded. No costs.

UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

No. 93-1535

DAVID WAYFIELD

Plaintiff, Appellant,

v.

TOWN OF TISBURY

Defendant, Appellee.

Before

Breyer, Chief Judge,

Bownes, Senior Circuit Judge,

Torruella, Selya, Cyr and Boudin,

Circuit Judges.

ORDER OF COURT

Entered January 4, 1994

Appellant's petition for rehearing en banc is denied.

By the Court:

Francis P. Scigliano

Clerk

[cc: Ms. Longman and Mr. Wayfield]

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

DAVID WAYFIELD,

Plaintiff,

v. CIVIL ACTION

No. 92-11461-S

TOWN OF TISBURY,

Defendant.

ORDER ON DEFENDANT'S MOTION TO DISMISS

AND RELATED MOTIONS

March 29, 1993

SKINNER, S.D.J.

Plaintiff David Wayfield, a resident of the Town of Tisbury, Massachusetts,

filed this pro se action alleging a pattern of discrimination and harassment. Plaintiff, a self-described white Christian European-American patriot, contends that numerous private parties in association with the defendant Town of Tisbury initiated a racist and religious conspiracy to deprive plaintiff of his constitutional and statutory rights due to his efforts to educate the public to the corrupting influence of Zionists on American values and interests.

Rather than answering the complaint, defendant filed a motion to dismiss the complaint in its entirety. Plaintiff then moved to amend his complaint to add additional parties and claims, but did not actually submit the proposed amended complaint. I denied that motion without prejudice. Plaintiff subsequently

submitted a 50-page amended complaint and several new motions. Plaintiff requests that this court (1) appoint counsel to assist plaintiff with his claims; (2) schedule a hearing so that public trial can be expedited; (3) take all steps necessary to inform the taxpayers of Tisbury of this action because the "local corrupt media' have refused to cover the case; (4) reprimand the court clerk for mailing a prior order of this court six days after its issuance; and (5) allow the amended complaint.

Wayfield's initial complaint asserts claims under the First Amendment to the U.S. Constitution and under 42 U.S.C. §§ 1983, 1985, 42 U.S.C. § 2000a, unspecified provisions of the Civil Rights Act of 1964, unspecified provisions of the Hate Crimes Statistics Act, and the Racketeer

Influenced and Corrupt Organizations Act. His amended complaint names eight new defendants and adds claims under the Second, Fourth, Fifth, Sixth, Ninth, Tenth, and Fourteenth Amendments, 42 U.S. C. § 1986, 42 U.S.C. §§ 2000b, 2000d, and unspecified provisions of the Genocide Convention. The complaint seeks $5,000,000 in compensatory damages, $5,000,000 in punitiuve damages, and more than ten separate injunctions.

Before reaching the merits of the pending motions, I summarize Wayfield's claims. The language, allegations, and characterizations are the plaintiff's, not my own. Plaintiff's troubles began as early as 1983. On July 27, 1983, the Unitarian Church of Tisbury hosted a talk by Rabbi Jerome Davidson. After Wayfield challenged the church to permit an

American Arab as a speaker, several members of the "local Zionist community" summoned the police. Wayfield apparently was not arrested.

In 1986, Wayfield was the object of several unfavorable newspaper stories that focused on his plan to build a garden at his home "to honor distinguished anti-Zionist Jewish authors and patriots." In one local news story, a Rabbi was quoted as saying, "I hope Islanders will take steps to thwart plans for the garden." Wayfield claims that the Town heeded that call by raising his property taxes. Following publication of these stories, Wayfield's property taxes increased nearly threefold. The 1986 appraised value of his land was $31,200; the 1987 assessment jumped to $89,600. Wayfield quotes an unidentified city tax assessor as

attributing the increased taxes to his planned garden. He suffered great stress after learning of the increased assessment and suffered a heart attack several days later. Wayfield filed an application for an abatement of his real estate taxes, citing comparable properties that had lower per square foot assessments. The application was rejected in 1987.

Between 1987 and 1989, Wayfield was the frequent victim of harassment and discrimination on account of his political views. He was unable to arrange speaking engagements for anti-Zionist authors because of "the totalitarian, racist Zionists." Wayfield was targeted by the Anti-Defamation League of B'nai B'rith (the "ADL") in its summer 1989 research report for his views on Holocaust

revisionism.[1] Wayfield describes the ADL, and several other Jewish organizations, as "hate organizations with genocidal propensities towards European-Americans." Wayfield faced assorted difficulties from "Zionist interference and suppression" when operating his bookmobile and when distributing pamphlets at public events. Apparently, private citizens called the police several times to have Wayfield removed from private property, but he was not arrested. In 1990, Wayfield was denied membership in the Tisbury chapter of the American Legion because he refused to answer a question regarding "the cult

---

[1] Holocaust Revisionist contend that traditional accounts of Jewish suffering at the hands of Adolph Hitler and claims of state sponsored racial genocide are greatly exaggerated. Wayfield is fighting to ensure that "the Jewish holocaust no longer be used as a money-making racket to suck money out of the American taxpayer."

now known as the Holocaust."

On December 11, 1990, Wayfield was called by the director of the Vineyard Haven Public Library of Tisbury and asked if he knew what happened to a menorah that had been displayed in the library to celebrate Hanukkah, a Jewish holiday. Wayfield denied involvement in the disappearance. Several days later, Wayfield met with the library director to encourage the library to stock revisionist materials. Following the meeting, Wayfield stayed in the library to perform research. Within an hour, the director accused Wayfield of stealing a second menorah that had been displayed in the area where Wayfield was doing research. Wayfield refused to permit a search of his shoulder bag. After Wayfield left the library, he was confronted by a Tisbury

police officer regarding the alleged theft. Wayfield denied any involvement and requested to go to his home so that he could call his lawyer. Several police arrived at Wayfield's home and peeked inside the windows of his home. Wayfield complains that he was treated as a fugitive from justice, but does not allege that his home or his person were actually searched. Wayfield was not arrested.

The library director and the library's board of trustees later informed Wayfield by certified mail that due to his disruptive conduct his library privileges had been suspended until April 2, 1991. He was not provided with notice of the suspension or a hearing to challenge the decision. The letters did not charge him with any crime. Wayfield returned to the library several times during the

suspension period and was eventually charged with trespassing. Wayfield attended several pre-trial conferences and declined a plea before the charges were dropped on January 31, 1992.

While the charges were pending against Wayfield, he was the victim of an attempted murder. On November 6, 1991, while Wayfield was walking near the Tisbury police station, an assassin ran past him, striking him on his left arm. Wayfield reported to police that a hit man had unsuccessfully attempted to inject something into his arm. He attributed the attack to Israel's secret police or their trained terrorist agents in the U.S. who had learned that Wayfield planned to sue the Town for malicious prosecution related to the library incident. Wayfield explains that since the hit man planned to

kill him near the Tisbury police station it is obvious that the assassin felt he could rely on the cooperation of someone connected to the police. The Tisbury police investigated the incident through December 1991, at which time the investigation was terminated. Wayfield claims the police investigation was inadequate for two reasons: the Police Chief "pandered to the Zionist community" and the White House may have directed the Chief to terminate the investigation "to avoid placing blame for the incident on pro-Israeli militants."

In January 1992, Wayfield was invited by the Tisbury Senior Center to discuss the history of World War II. After Wayfield submitted an outline of his talk that focused on revisionist history, the Center declined to sponsor the program.

In February 1992, Wayfield's application for a license to carry a firearm was rejected by the Tisbury Chief of Police. The Chief explained that he doubted Wayfield's suitability to carry a firearm and that the reported attempted murder was insufficient to support the application. Wayfield complains that the Town will not protect him from murder nor will it allow him to protect himself.

Finally, Wayfield asserts that the Vineyard Haven Public Library discriminates against White, non-Jewish patriots of European origin who are promoters of Western heritage. Through its selection of books, the library "plays up" the Jewish Holocaust under the Third Reich and "slavishly panders to the Zionist community." Wayfield also claims that children in the Tisbury public

schools are "brainwashed by Zionist textbooks" that debase the Christian European-American majority.

DISCUSSION

1. The Motion to Dismiss: Rule 12(b)(6)

Fed. R. Civ. Proc. 12(b)(6) governs the standard for deciding the motion to dismiss now before me. Accordingly, I must accept all well-pled factual averments as true, and draw all reasonable inferences therefrom in the nonmovant's favor. McDonald v. Santa Fe Trail Transp. Co., 427 U.S. 273, 276 (1976); Gooley v. Mobil Oil Corp., 851 F. 2d 513, 514 (1st Cir. 1988). Moreover, I will liberally construe the complaint to accommodate plaintiff's pro se status. Estelle v. Gamble, 429 U.S. 97, 106 (1976). In so doing, however, I must "eschew any

reliance on bald assertions [and] unsupportable conclusions." Dartmouth Review v. Dartmouth College, 889 F.2d 13, 16 (1st Cir. 1989) (quoting Snowden v. Hughes, 321 U.S. 1, 10 (1944). Plaintiff is obligated to set forth in his complaint "factual allegations, either direct or inferential, regarding each material element necessary to sustain recovery under some actionable legal theory." Gooley, 851 F.2d at 515. Only if the complaint, so viewed, presents no set of facts that could entitle the plaintiff to recovery will I allow the motion. Conley v. Gibson, 355 U.S. 41, 45-48 (1957); Gooley, 851 F.2d at 514. However, "minimal requirements are not tantamount to nonexistent requirements. The threshold [for stating a claim] may be low, but it is real . . ." Gooley, 851

F.2d at 514.

Our court of appeals has noted the particular importance of demanding specific factual allegations where civil rights violations lie at a suit's core:

> Gauzy generalities, unsupported conclusions, subjective characterizations, and problematic suppositions can sprout as easily as crabgrass in an imaginative litigant's (or lawyer's) word processor. Therefore, to avoid tarring defendants' reputations unfairly and to prevent potential abuses, we have consistently required plaintiffs to outline facts sufficient to convey specific instances of unlawful discrimination.

Dartmouth, 889 F.2d at 16 (citations omitted).

II. Wayfield's Numerous Claims

I have carefully reviewed plaintiff's allegations made in both the initial and the amended complaints. Wayfield's complaint, a tale of woe spanning nearly ten years, purportedly gives rise to claims for relief under more than fifteen separate constitutional and statutory provisions. Plaintiff, however, never explains what facts give rise to which claims, and never identifies even one statutory or constitutional standard for stating a claim under any relevant statute or constitutional amendment. Though Wayfield is a pro se plaintiff and cannot reasonably be expected to state his claims with the same precision as an attorney, neither is it this court's role to wade through Wayfield's nebulous narrative in the hope of discovering some legally

cognizable claim. McDonald v. Hall, 610 F.2d 16, 19 (1st Cir. 1979) ("Our duty to be 'less stringent' with pro se complaints does not require us to conjure up unpled allegations."). It works no injustice to require even a pro se plaintiff to plead specific facts backing up alleged civil rights violations. Glaros v. Perse, 628 F.2d 679, 684 (1st Cir. 1980) (affirming dismissal of a pro se complaint because plaintiff failed to describe briefly the unlawful activities of each defendant and how that conduct violated his constitutional rights).

Similarly, the defendant cannot reasonably be expected to address every frivolous claim and insignificant fact that the plaintiff has raised in his complaint. Nonetheless, the defendant has done a commendable job of framing a

coherent and persuasive response to the voluminous complaint. With one notable exception discussed below, defendant's memorandum in support of the motion to dismiss fairly and accurately summarizes the law on Wayfield's non-frivolous claims and properly concludes that Wayfield has failed to state specific factual allegations, either direct or inferential, regarding each material element necessary to sustain recovery under some actionable legal theory.

Only one claim raised in plaintiff's complaint warrants individual discussion: the increased property taxes. Where a state agent, acting under color of law, deprives another person of a right secured by the constitution, 42 U.S.C. § 1983

permits a private cause of action.[2] I understand plaintiff's allegations surrounding his 1987 property tax assessment to assert a claim under § 1983. I need not address the sufficiency of plaintiff's allegations, however, because the claim is plainly barred by the applicable statute of limitations.

A district court adjudicating a § 1983 claim must apply the statute of limitations applicable to personal injury actions under the law of the forum state,

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[2] The Statute provides, in pertinent part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State...subjects, or causes to be subjected, any citizen of the United States...to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C.A. § 1983 (West 1981).

in this case Massachusetts. Wilson v. Garcia, 471 U.S. 261, 276-80 (1985); Street v. Vose, 936 F.2d 38, 39 (1st Cir. 1991). The relevant Massachusetts statute establishes a three year statute of limitations. Mass. Gen. L. Ann. ch. 260, § 2A (West 1992) (actions in tort to recover for personal injuries shall be commenced only within three years after the cause of action accrues). Wayfield received notice of the increased assessment in December 1986 and his application for abatement was formally denied on June 16, 1987. Wayfield did not initiate suit until June 15, 1992, more than two years after the statutory period expired.

Wayfield's remaining claims are either frivolous or plainly lack sufficient particularity upon which I

could base an informed judgment. I do not address individually the numerous allegations and claims, but summarize the various fatal defects. First, many of his claims rely on allegedly discriminatory actions of private actors, as opposed to state officials. For those private individuals, however, Wayfield alleged no facts to support any relationship to or conspiracy with the government. Glaros, 628 F.2d at 685. Nor has Wayfield alleged specific facts to state a claim for unlawful private discrimination under any of the various statutes that he cites.

Second, with regard to governmental actors, Wayfield's complaint rests entirely on speculation and conjecture. He fails to make any nonconclusory allegations to indicate that he was subjected to unlawful governmental

discrimination because of his race, religion, or speech. Plaintiff's claims take form only when otherwise legitimate governmental action is viewed through a self-fulfilling, conspiratorial lens. The federal rules and our court of appeals, however, do not permit a plaintiff to rest claims on wholly conclusory grounds. Dartmouth, 889 F.2d at 16; Gooley, 851 F.2d at 514. There are simply no specific allegations to support any form of government conspiracy, to sustain any claim of a discriminatory governmental policy or custom, or to indicate that Wayfield was subjected to unlawful discrimination as opposed to lawful regulation of disruptive conduct.

This is not to say that plaintiff's claims fail because white, Christian European-Americans are not protected by

the constitution. The Town's statement in its brief to this effect is a gross misstatement of the law and is patently false. Except under very limited circumstances, the government must act in a race-blind, religion-neutral manner with regard to all citizens. Indeed, the Supreme Court has repeatedly struck down governmental programs which were intended to benefit racial minorities because the programs failed to comport with the exacting constitutional requirements imposed on race conscious behavior and/or risked trammeling the rights of white citizens.[3] In this case, Wayfield's claims

[3] E.g. Metro Broadcasting, Inc. v. FCC, 497 U.S. 547, 564-65 (1990) (finding benign race conscious measures mandated by Congress constitutionally permissible only to the extent that they serve important governmental objectives and are substantially related to the achievement of those objectives); Richmond v. J.A. Croson Co., 488 U.S. 469, 505 (1989)

fail because he has relied entirely on conclusory allegations of discrimination and conspiracy.

Finally, Wayfield frequently explains that his claims will be fleshed out after having the benefit of discovery. However,

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(striking down a minority set aside program because "the city has failed to demonstrate a compelling interest in apportioning public contracting opportunities on the basis of race"); Wygant v. Jackson Bd. of Educ., 476 U.S. 267 (1986) (finding unconstitutional a plan which granted preferential protection against layoffs to some minority employees on the basis of their race or national origin); Fullilove v. Klutznick, 448 U.S. 448, 491 (1980) ("Any preference based on racial or ethnic criteria must necessarily receive a most searching examination to make sure that it does not conflict with constitutional guarantees."); Regents of Univ. of California v. Bakke, 438 U.S. 265, 291 (1978) ("Racial and ethnic distinctions of any sort are inherently suspect and thus call for the most exacting judicial examination."). In short, there can be no doubt that the constitution protects all persons against invidious government classifications based on race, national origin, and religion, regardless of whether the complainant is black, white, Christian, or Jew.

a plaintiff is not entitled to discovery merely to find out whether or not there is a factual basis for his claim. E.g., MacKnight v. Leonard Morse Hosp., 828 F.2d 48, 52 (1st Cir. 1987). Plaintiff has failed to allege sufficient facts to state a claim and is not entitled to use the costly and time consuming discovery procedure as a "fishing expedition." Id.

Even in light of the favorable standard of review on a motion to dismiss and plaintiff's status as a pro se plaintiff, I can find no basis for allowing the suit to proceed. Defendant's motion to dismiss is ALLOWED. As the amended complaint would also be subject to dismissal, plaintiff's motion to amend the complaint is DENIED. Plaintiff's motion to appoint counsel, to hold a hearing to expedite trial, and to inform the

taxpayers of this action are DENIED as moot. Finally, the motion to reprimand the court clerk is DENIED.

Walter Jay Skinner

United States District Judge

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

DAVID WAYFIELD

JUDGMENT IN A CIVIL CASE

v.

TOWN OF TISBURY

CASE NUMBER: 92-11461-S

IT IS ORDERED AND ADJUDGED pursuant to the Court's Order on Defendant's Motion to Dismiss and Related Motions dated March 29, 1993, that the complaint in the above entitled case be, and the same hereby is, DISMISED. SO ORDERED.

March 30, 1993 — Robert J. Smith, Jr.

Date — Clerk

Philip L. Lyons

(By) Deputy Clerk

AMENDMENT I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process

of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C. §§ 1983, 1985, 1988

§1983. Civil Action for Deprivation of Rights.

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

§1985. Conspiracy to Interfere With Civil Rights.

Depriving persons of rights or privileges

(3) If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purposes of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purposes of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support

or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice-President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

§1988. Proceedings in Vindication of Civil Rights.

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this chapter and Title 18, for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so

far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found quilty. In any action or proceeding to enforce a provision of sections 1981, 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92-318, or in any civil action or proceeding, by or on behalf of the United States of America, to enforce, or charging a violation of, a provision of the United States Internal Revenue Code, or title VI of the Civil Rights Act of 1964, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

A-50

January 31, 1992

TO:

Joyce Stiles, Madeline Blakely and all Trustees of the Tisbury Senior Center

This is in response to your request today for a written description of the agenda for the discussion group which I have been planning for the Tisbury Senior Center.

This group will focus on revisionist history, primarily World War II, its causes and effects, as well as those who promoted it and those who profited from it. We will also discuss the opponents of this war such as those of the America-First movement. We will discuss the war after World War II, a war of looting, hanging and starvation against defenceless Europe.

We will examine the role of the

international bankers in promoting war as seen by revisionist historians.

We will examine the role of propaganda in getting people to go to war and how this propaganda was debunked after World War I but is still being promoted since World War II. We will examine this statement:

> "The propaganda against Japan was never allowed to take a racial form, lest the racial instincts of the American population be awakened into a storm that would sweep away the Culture-distorting regime in America."

We will examine the holocausts in various countries as seen by establishment historians versus revisionist historians. This will include holocausts of the American Civil War, the Boer War, World

War II and the war of the Soviet commissars versus the Soviet people. In respect to the latter we will examine the claims last year by Pravda and Isvestya that these commissars murdered 50 million people.

We will also examine what local students are being taught about World War II.

Yours truly,

/s/ David Wayfield

David Wayfield
P.O. Box 699
Vineyard Haven, MA 02568

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COUNCIL ON AGING
TOWN OF TISBURY
POST OFFICE BOX 1239
VINEYARD HAVEN, MASSACHUSETTS 02568
(508) 696-4205

February 24, 1992

Dear Mr. Wayfield,

This letter is written in response to your proposal for the Council on Aging to sponsor a program entitled "Historical Revisionism". The Board discussed this proposal in depth and felt that we as a Council on Aging can not sponsor such a program because it does not fall within the realm of our programs that we offer seniors here at the center.

We want to thank you for your idea and proposal and hope that you will be able to offer this program maybe through Nathan Mayhew Seminars as a possible suggestion.

Sincerely,

/s/ A. Freeman Leonard Jr.

A. Freeman Leonard Jr., Chairman

Tisbury Council on Aging

A-55

LIBRARY BILL OF RIGHTS

The American Library Association affirms that all libraries are forums for information and ideas, and that the following basic policies should guide their services.

1. Books and other library resources should be provided for the interest, information, and enlightenment of all people of the community the library serves. Materials should not be excluded because of the origin, background, or views of those contributing to their creation.

2. Libraries should provide materials and information presenting all points of view on current and historical issues. Materials should not be proscribed or removed because of partisan or doctrinal disapproval.

3. Libraries should challenge censorship in the fulfillment of their responsibility to provide information and enlightenment.

4. Libraries should cooperate with all persons and groups concerned with resisting abridgment of free expression and free access to ideas.

5. A person's right to use a library should not be denied or abridged because of origin, age, background, or views.

6. Libraries which make exhibit spaces and meeting rooms available to the public they serve should make such facilities available on an equitable basis, regardless of the beliefs or affiliations of individuals or groups requesting their use.

Adopted June 18, 1948.
Amended February 2, 1961, June 27, 1967, and January 23, 1980, by the ALA Council.

LIBRARY RULES

The Vineyard Haven Public Library offers opportunities for reading, general studies, cultural activities, and community information. The Library serves the community most effectively when everyone follows a few simple rules:

1. The Library is an area for quiet study. Any person who, in the opinion of the Library staff, is engaging in conduct inconsistent with the orderly operation of the Library will be asked to leave, and may have his or her privileges suspended at the discretion of the Director or the Library Trustees.

2. Please observe the NO EATING, SMOKING AND DRINKING rule.

3. Those who damage or deface library property or materials will be prosecuted.

4. It is larceny to remove ANY materials

from the Library without having them checked out first.

5. Misplacement of Library materials within the building may also result in loss of Library privileges.

6. The Library reserves the right to examine any bags or parcels.

7. Pets are not allowed in the Library.

8. Please respect others' right to privacy. Harassment by obnoxious, mischievous, or threatening language or behavior will not be allowed.

9. Parents are responsible for the behavior and supervision of their young children.

10. Appropriate clothing includes shoes and shirts.

Please understand that failure to abide by these rules may be grounds for expulsion or suspension of privileges.

Board of Trustees

The above Rules were approved by the Board of Trustees on Feb. 28, 1991. They were reviewed by Town Counsel and Executive Secretary of Tisbury. At their regular meeting on March 13, 1991, the Trustees voted unanimously to adopt the Rules as of April 2, 1991.

Respectfully submitted,

/s/ Barbara M. Donald

Barbara M. Donald, Secretary

A-60

BOARD OF TRUSTEES

VINEYARD HAVEN PUBLIC LIBRARY

- - - -

BY - LAWS

August 10, 1988

Article I - Name and Purpose

This organization shall be called "The Board of Trustees of the Vineyard Haven Library." It shall exist by virtue of the provisions of Chapter 78 of the General Laws of the Commonwealth of Massachusetts. It shall exercise the power(s) and authority granted to it, and assume the responsibilities delegated to it under said statute. Its purpose is to ensure, to the greatest extent possible, that the policies of the Library are promulgated to the Town, and the Library's objectives are met. These objectives include:

1. The assumption of a leadership role in

the community and serving as a center of information.

2. Indentifying community needs which the Library can fill.

3. The promotion of enlightened citizenship and continuing self-education.

4. Advocacy of the "Library Bill of Rights" and the "Freedom to Read" statement.

5. The provision of free library service to every resident of the community.

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Articles II to VII deleted.

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The above By-Laws of the Vineyard Haven Public Library (previously amended in 1982) were approved unanimously by the Board of Trustees on August 10, 1988.

/s/ Kathleen L. Sawyer

K. L. Sawyer
Secretary

THE FREEDOM TO READ (abbreviated)

The freedom to read is essential to our democracy. It is continuously under attack. Private groups and public authorities in various parts of the country are working to remove books from sale, to censor textbooks, to label "controversial" books, to distribute lists of "objectionable" books or authors, and to purge libraries. These actions apparently rise from a view that our national tradition of free expression is no longer valid; that censorship and suppression are needed to avoid the subversion of politics and the corruption of morals. We, as citizens devoted to the use of books and as librarians and publishers responsible for disseminating them, wish to assert the public interest in the preservation of the freedom to

read.

We are deeply concerned about these attempts at suppression. Most such attempts rest on a denial of the fundamental premise of democracy: that the ordinary citizen, by exercising critical judgment, will accept the good and reject the bad. The censors, public and private, assume that they should determine what is good and what is bad for their fellow-citizens.

We trust Americans to recognize propaganda, and to reject it. We do not believe they need the help of censors to assist them in this task. We do not believe they are prepared to sacrifice their heritage of a free press in order to be "protected" against what others think may be bad for them. We believe they still favor free enterprise in ideas and

expression.

We are aware, of course, that books are not alone in being subjected to efforts at suppression. We are aware that these efforts are related to a larger pattern of pressures being brought against education, the press, films, radio and television. The problem is not only one of actual censorship. The shadow of fear cast by these pressures leads, we suspect, to an even larger voluntary curtailment of expression by those who seek to avoid controversy.

Such pressure toward conformity is perhaps a natural to a time of uneasy change and pervading fear. Especially when so many of our apprehensions are directed against an ideology, the

We therefore affirm these propositions:

1. It is in the public interest for publishers and librarians to make available the widest diversity of views and expressions, including those which are unorthodox or unpopular with the majority.

2. Publishers, librarians and booksellers do not need to endorse every idea or presentation contained in the books they make available. It would conflict with the public interest for them to establish their own political, moral or aesthetic views as a standard for determining what books should be published or circulated.

3. It is contrary to the public interest for publishers or librarians to determine the acceptability of a book on the basis of the personal history or

political affiliations of the author.

4. There is no place in our society for efforts to coerce the taste of others, to confine adults to the reading matter deemed suitable for adolescents, or to inhibit the efforts of writers to achieve artistic expression.

5. It is not in the public interest to force a reader to accept with any book the prejudgment of a label characterizing the book or author as subversive or dangerous.

6. It is the responsibility of publishers and librarians, as guardians of the people's freedom to read, to contest encroachments upon that freedom by individuals or groups seeking to impose their own standards or tastes upon the community at large.

7. It is the responsibility of

publishers and librarians to give full meaning to the freedom to read by providing books that enrich the quality and diversity of thought and expression. By the exercise of this affirmative responsibility, they can demonstrate that the answer to a bad book is a good one, the answer to a bad idea is a good one.

This statement was originally issued in May of 1953 by the Westchester Conference of the American Library Association and the American Book Publishers Council, which in 1970 consolidated with the American Educational Publishers Institute to become the Association of American Publishers.

Adopted June 25, 1953; revised January 28, 1972, January 16, 1991, by the ALA Council and the AAP Freedom to Read

Committee.

A Joint Statement by:

American Library Association

Association of American Publishers

Subsequently Endorsed by:

American Booksellers Association

American Booksellers Foundation for Free Expression

American Civil Liberties Union

American Federation of Teachers AFL-CIO

Anti-Defamation League of B'nai B'rith

Association of American University Presses

Children's Book Council

Freedom to Read Foundation

International Reading Association

Thomas Jefferson Center for the Protection of Free Expression

National Association of College Stores

National Council of Teachers of English

P.E.N. - American Center

People for the American Way

Periodical and Book Association of America

Sex Information and Education Council of the U.S.

Society of Professional Journalists

Women's National Book Association

YWCA of the U.S.A.

A-70

The New York Times

EDITORIALS/LETTERS

Saturday, January 1, 1994

Don't Cut Off All Debate About the Holocaust

To the Editor:

Re "Holocaust Deniers Got More Than Visibility" (letters, Dec. 23), on the publishing of a Holocaust denier's ad in the Brandeis University paper:

As the debate develops on whether or not the Holocaust should be debated, let us recall that the word "holocaust" was first used in World War II on Christmas Eve 51 years ago.

While Jews over the centuries were repeatedly expelled from Western countries, they invariably found a safe haven in Poland. Jewish life, religion and culture, persecuted elsewhere,

flourished in Poland for 800 years, until World War II. Poland became the center of Judaism in Europe, with Vilnius called "Little Jerusalem." Today, the undeniable fact of the disappearance of Jewish cultural and especially religious life in Poland after World War II and the Holocaust cannot be questioned. However, as with any important historical event, the exact history of the Holocaust should continue to be studied, interpreted and debated.

Reinterpretation of the World War II Holocaust should not be labeled bigotry. Jewish and Israeli scholars first began systematically to bring down to size unnecessary distortions and wartime rumors about the fate of Jews in this tragic era. It is difficult to claim that Prof. Yehuda Bauer of Hebrew University, or Dr. Shmul

Krakowski of the Yad Vashem Holocaust studies center or professors Arno Meyer of Princeton University and Howard Stein of the University of Oklahoma are neo-Nazis or bigots.

They wrote in The Jerusalem Post (May 1990), Washington Times (July 1990) and Journal of Psychohistory (fall 1978) that the Nazis never made soap from human fat and the number of gassed victims at Auschwitz should be lowered by three million.

In 1985, Leo Ettinger and Robert Krell, both Jewish and professors at the University of British Columbia, compiled a bibliography of about 1,600 medical articles, "Psychological and Physical Effects of Concentration Camps," a post-acute stress disorder, popularized by Patrick Buchanan as Holocaust survivor

syndrome. Finally, last October, the Auschwitz victim count was officially reduced to 800,000 in a book about to be issued by the Holocaust Memorial Museum in Washington.

The word "holocaust" was not capitalized in its earliest uses in reference to World War II, even in Jewish sources. Indeed, while mainstream publications reported, for instance, that two million Jews had been "exterminated in Treblinka death house" with "heat and steam" (New York Times, Aug. 8, 1943), they did not use the word "holocaust."

The word "holocaust" in World War II was first used by the Soviet Jewish Anti-Fascist Committee on Christmas Eve 1942, when the fall of Stalingrad appeared imminent and the first (and last) bombs were dropped on Tel Aviv. The word

"holocaust" was used, with a description of this event, in the Dec. 24, 1942, daily bulletin of the Jewish Telegraphic Agency from Moscow.

The only known complete copy of the daily bulletin was discovered on the shelves of the New York Public Library recently. About 12,000 pages of this invaluable data, printed on cheap, wartime, acid paper, have crumbled away in untouched bundles, tied up 50 years ago with cord that is yellowing and falling apart. They are still not microfilmed because of a shortage of funds. Only debate of the Holocaust might provide more funds and thus preserve and bring to light important details.

Likewise, millions of the less important pages of Nazi documents, also on acid paper, and still not read or even

microfilmed, slowly disintegrate in vaults at the National Archives and elsewhere. These Nazi materials might still contain the intensely sought-for wartime Nazi document explicitly ordering the final solution or describing the homicidal gasings.

Irene Zdziarski

Stamford, Conn., Dec. 23, 1993

The writer is chairwoman, Holocaust Committee, Polish Historical Society.